

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MARCUS BLACKWELL,

Plaintiff,

v.

D. JONES, *et al.*,

Defendants.

Case No. 3:23-cv-00154-MMD-CLB

ORDER

**I. SUMMARY**

Plaintiff Marcus Blackwell brings this *pro se* civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 1-1.) Because Blackwell is no longer incarcerated, on July 17, 2023, this Court ordered him to either pay the \$402 filing fee or file an application to proceed *in forma pauperis* for a non-inmate by August 16, 2023. (ECF No. 4.) That deadline has expired, and Blackwell did not pay the filing fee, apply for pauper status as a non-inmate, or otherwise respond.

**II. DISCUSSION**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s

1 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;  
2 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
3 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*  
4 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
5 *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this litigation  
7 and the Court's interest in managing its docket, weigh in favor of dismissal of Blackwell's  
8 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
9 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
10 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542  
11 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
12 cases on their merits—is greatly outweighed by the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic alternatives can  
14 be used to correct the party's failure that brought about the Court's need to consider  
15 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
16 that considering less drastic alternatives *before* the party has disobeyed a court order  
17 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
18 Cir. 2002). Courts "need not exhaust every sanction short of dismissal before finally  
19 dismissing a case, but must explore possible and meaningful alternatives." *Henderson v.*  
20 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because litigation cannot progress without  
21 a plaintiff's compliance with the Court's orders, the only alternative is to enter a second  
22 order setting another deadline. But entering a second order will only delay the inevitable  
23 and further squander the Court's finite resources because Blackwell ignored the first  
24 order. Setting another deadline is not a meaningful alternative given these circumstances.  
25 So the fifth factor favors dismissal.

### 26 **III. CONCLUSION**

27 Having thoroughly considered these dismissal factors, the Court finds that they  
28 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without

1 prejudice based on Marcus Blackwell's failure to either pay the filing fee or file an  
2 application to proceed *in forma pauperis* in compliance with this Court's July 17, 2023,  
3 order.

4 The Clerk of Court is directed to enter judgment accordingly and close this case.  
5 No other documents may be filed in this now-closed case. If Marcus Blackwell wishes to  
6 pursue his claims, he must file a complaint in a new case and either pay the required filing  
7 fee or apply for pauper status.

8 DATED THIS 28<sup>th</sup> Day of August 2023.

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11 MIRANDA M. DU  
12 CHIEF UNITED STATES DISTRICT JUDGE  
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